

KRISLOV & ASSOCIATES, LTD.

Attorneys at Law

CIVIC OPERA BUILDING, SUITE 1350
20 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

FAX (312) 606-0207
TELEPHONE (312) 606-0500

March 01, 2004

Renata B. Hesse
Chief, Networks & Technology Enforcement Section
Antitrust Division
U.S. Department of Justice
600 E. Street N.W., 9th Floor
Washington, D.C. 20530-0001

**Re: First Data/Concord Merger Litigation
Objection to Settlement and Permission to Complete Merger**

Dear Ms. Hesse:

We wish to object to your agreement to permit the merger between Concord EFS, Inc. and First Data, and we would like the opportunity to shed light on the overbearing anti-competitive behavior of Concord, and believe it is ill-advised to permit them to increase their market share by this merger, unless changes are made to improve customer service and delete unfair provisions from their form contracts. As we will show, Concord signs on merchants by unsupervised Ponzi-type marketers, then abuses its customers in ways that leave them without effective redress. Giving them the opportunity to do this on a grander scale is unconscionable, unless the government requires changes in Concord's form agreements.

Background: Our Client's Experience With Concord/EFS

Our client, Ryco, Ltd., d/b/a Hansen's Good to Go, an independent gas station convenience store located in Arizona, was solicited by one of Concord's sales representatives to contract with Concord for processing his customer's credit card charges. Ryco came to us early last year with a concern of how fees were being charged by the company, how his transactions were being routed once within Concord's network, and the level of control and supervision Concord maintained over its sales associates.

Concord/EFS virtually owns the market for servicing merchants' credit and debit card transactions. By its SEC corporate filings, Concord boasts that it controls the routing for 56% of all PIN-based debit transactions, and controls 64% of all ATM machines in the United States. Similar to the discredited long distance telephone slammers, Concord uses an army of independent, unsupervised contractor commission based solicitors to get small merchants to engage Concord to provide credit card servicing to their customers by promising network routing

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and low transaction charges to merchants, which Concord simply ignores. Concord's customer service to these merchants is worse than non-existent. Thus, when merchants call to take issue with double charges on their bills, and misrouted transactions through higher cost networks, their inquiries are simply ignored. After Concord failed to respond to numerous calls to its customer service, Ryco simply had no way to correct Concord's charges, other than to sue them.

Under Concord's form contracts, all disputes must be brought in Concord's Tennessee jurisdiction and the loser pays the winners' costs. The result of this was having to engage counsel in Tennessee, and suing in federal court. However, when the court dismissed the federal count and declined to exercise supplemental jurisdiction, rather than accept this small victory over the consumer, Concord then sued our client for fees, in effect, using the fee provision of the merchant contract as a threat against further litigation of the matter.

Unmoved by such truculent tactics, our client requested we continue our pursuit of what he believed to be a necessary fight against this company's dishonest and deceitful practices. As this Department understands, the issue of how a company routes charges and imposes fees, potentially a very costly unknown for unsavvy small merchants.

Amazingly, the federal judge signed onto Concord's coercive measures by ordering payment of nearly \$80,000 in fees to the Defendants. Unable to further pursue litigation with this additional burden, we were able to negotiate to drop all claims, for our payment of \$5,000 to Concord, demonstrating Concord's intent to preclude any consumer challenges.

We bring these matters to the Department's attention as demonstrative of the manner in which Concord treats its consumers, and their iron-fist approach to "customer service". Allowing this company to further grow, controlling what would amount to nearly half of the market for debit card transactions, would create an uncontrollable corporate machine, baiting and switching customer transactions all the way to their internally-controlled bank.

This merger must be prevented, and Concord forced to change its practices, rather than have those practices amplified through a larger share of the market. Accordingly, Concord/First Data should not be given this increased market share under current circumstances. We believe that the merger should not be approved without Concord agreeing to delete two provisions of its contract (deleting the provisions requiring suits to be brought in Concord's home district and the "loser pays" provision, unless changed to apply to ultimate victory), and upgrading its customer service.

Very truly yours,



Clinton A. Krislov